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**BEFORE THE
PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. ID 2004 64026

MICHAEL KINWAI KWONG
940 Post Street, #32
San Francisco, CA 94109

A C C U S A T I O N

Physical Therapist Assistant
License No. AT 6485

Respondent.

Complainant alleges:

PARTIES

1. Steven K. Hartzell (Complainant) brings this Accusation solely in his official capacity as the Executive Officer of the Physical Therapy Board of California, Department of Consumer Affairs.

2. On or about March 5, 2003, the Physical Therapy Board of California issued Physical Therapist Assistant License Number AT 6485 to MICHAEL KINWAI KWONG ("Respondent" or "Kwong"). The Physical Therapist Assistant License was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2007, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Physical Therapy Board of California (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2609 of the Code states:

“The board shall issue, suspend, and revoke licenses and approvals to practice physical therapy as provided in this chapter.”

5. Section 2630 of the Code states:

“It is unlawful for any person or persons to practice, or offer to practice, physical therapy in this state for compensation received or expected, or to hold himself or herself out as a physical therapist, unless at the time of so doing the person holds a valid, unexpired, and unrevoked license issued under this chapter.

“Nothing in this section shall restrict the activities authorized by their licenses on the part of any persons licensed under this code or any initiative act, or the activities authorized to be performed pursuant to Article 4.5 (commencing with Section 2655) or Chapter 7.7 (commencing with Section 3500). A physical therapist licensed pursuant to this chapter may utilize the services of one aide engaged in patient-related tasks to assist the physical therapist in his or her practice of physical therapy. "Patient-related task" means a physical therapy service rendered directly to the patient by an aide , excluding non-patient-related tasks. "Non-patient-related task" means a task related to observation of the patient, transport of the patient, physical support only during gait or transfer training, housekeeping duties, clerical duties, and similar functions. The aide shall at all times be under the orders, direction, and immediate supervision of the physical therapist. Nothing in this section shall authorize an aide to independently perform physical therapy or any physical therapy procedure. The board shall adopt regulations that set forth the standards and requirements for the orders, direction, and immediate supervision of an aide by a physical therapist. The physical therapist shall provide continuous and immediate supervision of the aide. The physical therapist shall be in the same facility as,

1 and in proximity to, the location where the aide is performing patient-related tasks, and
2 shall be readily available at all times to provide advice or instruction to the aide. When
3 patient-related tasks are provided to a patient by an aide, the supervising physical
4 therapist shall, at some point during the treatment day, provide direct service to the
5 patient as treatment for the patient's condition, or to further evaluate and monitor the
6 patient's progress, and shall correspondingly document the patient's record.

7 “The administration of massage, external baths, or normal exercise not a part of a
8 physical therapy treatment shall not be prohibited by this section”.

9 6. Section 2660 of the Code states:

10 “The board may, after the conduct of appropriate proceedings under the
11 Administrative Procedure Act, suspend for not more than 12 months, or revoke, or
12 impose probationary conditions upon, or issue subject to terms and conditions any
13 license, certificate, or approval issued under this chapter for any of the following causes:

14 . . .

15 (h) Gross negligence in his or her practice as a physical therapist or
16 physical therapy assistant.

17 (i) . . . violating, or attempting to violate, directly or indirectly, or
18 assisting in or abetting the violating of, or conspiring to violate any provision or
19 term of this chapter or of the State Medical Practice Act.

20 (j) The aiding or abetting of any person to violate this chapter or any
21 regulations duly adopted under this chapter.

22 (k) The aiding or abetting of any person to engage in the unlawful practice
23 of physical therapy.

24 (l) The commission of any fraudulent, dishonest, or corrupt act which is
25 substantially related to the qualifications, functions, or duties of a physical
26 therapist or physical therapy assistant.

27 7. Section 2655 of the Code states:

28 “As used in this article:

1 (a) "Physical therapist" means a physical therapist licensed by the board.

2 (b) "Physical therapist assistant" means a person who meets the
3 qualifications stated in Section 2655.3 and who is approved by the board to assist
4 in the provision of physical therapy under the supervision of a physical therapist
5 who shall be responsible for the extent, kind, and quality of the services provided
6 by the physical therapist assistant.

7 (c) "Physical therapist assistant" and "physical therapy assistant" shall be
8 deemed identical and interchangeable.

9 8. Section 2655.2 of the Code states:

10 "A physical therapist shall not supervise more physical therapist assistants
11 at any one time than in the opinion of the board can be adequately supervised.
12 Two physical therapist assistants shall be the maximum number of physical
13 therapist assistants supervised by a physical therapist at any one time, but the
14 board may permit the supervision of a greater number by a physical therapist if, in
15 the opinion of the board, there would be adequate supervision and the public's
16 health and safety would be served. In no case, however, shall the total number of
17 physical therapist assistants exceed twice the number of physical therapists
18 regularly employed by a facility at any one time."

19 9. Section 2655.7 of the Code states:

20 "Notwithstanding Section 2630, a physical therapist assistant may assist in
21 the provision of physical therapy service provided the assistance is rendered under
22 the supervision of a physical therapist licensed by the board."

23 10. Section 2655.92 of the Code states:

24 "The board may adopt regulations as reasonably necessary to carry out the
25 purposes of this article. The board shall adopt a regulation formulating a
26 definition of the term "adequate supervision" as used in this article."

27 11. Section 1398.44 of Title 16 of the California Code of Regulations states:

28 "1398.44. Adequate Supervision Defined.

1 “A licensed physical therapist shall at all times be responsible for all physical
2 therapy services provided by the physical therapist assistant. The supervising
3 physical therapist has continuing responsibility to follow the progress of each
4 patient, provide direct care to the patient and to assure that the physical therapist
5 assistant does not function autonomously. Adequate supervision shall include all
6 of the following:

7 (a) The supervising physical therapist shall be readily available in person
8 or by telecommunication to the physical therapist assistant at all times while the
9 physical therapist assistant is treating patients. The supervising physical therapist
10 shall provide periodic on site supervision and observation of the assigned patient
11 care rendered by the physical therapist assistant.

12 (b) The supervising physical therapist shall initially evaluate each patient
13 and document in the patient record, along with his or her signature, the evaluation
14 and when the patient is to be reevaluated.

15 (c) The supervising physical therapist shall formulate and document in
16 each patient's record, along with his or her signature, the treatment program goals
17 and plan based upon the evaluation and any other information available to the
18 supervising physical therapist. This information shall be communicated verbally,
19 or in writing by the supervising physical therapist to the physical therapist
20 assistant prior to initiation of treatment by the physical therapist assistant. The
21 supervising physical therapist shall determine which elements of the treatment
22 plan may be assigned to the physical therapist assistant. Assignment of these
23 responsibilities must be commensurate with the qualifications, including
24 experience, education and training, of the physical therapist assistant.

25 (d) The supervising physical therapist shall reevaluate the patient as
26 previously determined, or more often if necessary, and modify the treatment, goals
27 and plan as needed. The reevaluation shall include treatment to the patient by the
28 supervising physical therapist. The reevaluation shall be documented and signed

1 by the supervising physical therapist in the patient's record and shall reflect the
2 patient's progress toward the treatment goals and when the next reevaluation shall
3 be performed.

4 (e) The physical therapist assistant shall document each treatment in the
5 patient record, along with his or her signature. The physical therapist assistant
6 shall document in the patient record and notify the supervising physical therapist
7 of any change in the patient's condition not consistent with planned progress or
8 treatment goals. The change in condition necessitates a reevaluation by a
9 supervising physical therapist before further treatment by the physical therapist
10 assistant.

11 (f) Within seven (7) days of the care being provided by the physical
12 therapist assistant, the supervising physical therapist shall review, cosign and date
13 all documentation by the physical therapist assistant or conduct a weekly case
14 conference and document it in the patient record. Cosigning by the supervising
15 physical therapist indicates that the supervising physical therapist has read the
16 documentation, and unless the supervising physical therapist indicates otherwise,
17 he or she is in agreement with the contents of the documentation.

18 (g) There shall be a regularly scheduled and documented case conference
19 between the supervising physical therapist and physical therapist assistant
20 regarding the patient. The frequency of the conferences is to be determined by the
21 supervising physical therapist based on the needs of the patient, the supervisory
22 needs of the physical therapist assistant and shall be at least every thirty calendar
23 days.

24 (h) The supervising physical therapist shall establish a discharge plan. At
25 the time of discharge, or within 7 (seven) days thereafter, a supervising physical
26 therapist shall document in the patient's record, along with his or her signature, the
27 patient's response to treatment in the form of a reevaluation or discharge
28 summary.”

12. Section 1399 of Title 16 of the California Code of Regulations states:

1399. Requirements for Use of Aides.

“A physical therapy aide is an unlicensed person who assists a physical therapist and may be utilized by a physical therapist in his or her practice by performing non-patient related tasks, or by performing patient related tasks.

(a) As used in these regulations:

(1) A "patient related task" means a physical therapy service rendered directly to the patient by an aide, excluding non-patient related tasks as defined below.

(2) A "non-patient related task" means a task related to observation of the patient, transport of patients, physical support only during gait or transfer training, housekeeping duties, clerical duties and similar functions.

(b) "Under the orders, direction and immediate supervision" means:

(1) Prior to the initiation of care, the physical therapist shall evaluate every patient prior to the performance of any patient related tasks by the aide. The evaluation shall be documented in the patient's record.

(2) The physical therapist shall formulate and record in the patient's record a treatment program based upon the evaluation and any other information available to the physical therapist, and shall determine those patient related tasks which may be assigned to an aide. The patient's record shall reflect those patient related tasks that were rendered by the aide, including the signature of the aide who performed those tasks.

(3) The physical therapist shall assign only those patient related tasks that can be safely and effectively performed by the aide. The supervising physical therapist shall be responsible at all times for the conduct of the aide while he or she is on duty.

(4) The physical therapist shall provide continuous and immediate supervision of the aide. The physical therapist shall be in the same facility as and

1 in immediate proximity to the location where the aide is performing patient
2 related tasks, and shall be readily available at all times to provide advice or
3 instruction to the aide. When patient related tasks are provided a patient by an aide
4 the supervising physical therapist shall at some point during the treatment day
5 provide direct service to the patient as treatment for the patient's condition or to
6 further evaluate and monitor the patient's progress, and so document in the
7 patient's record.

8 (5) The physical therapist shall perform periodic re-evaluation of
9 the patient as necessary and make adjustments in the patient's treatment program.
10 The re-evaluation shall be documented in the patient's record.

11 (6) The supervising physical therapist shall countersign with their
12 first initial and last name, and date all entries in the patient's record, on the same
13 day as patient related tasks were provided by the aide.

14 13. Section 2661.5 (a) of the Code states:

15 "In any order issued in resolution of a disciplinary proceeding before the
16 board, the board may request the administrative law judge to direct any licensee
17 found guilty of unprofessional conduct to pay to the board a sum not to exceed the
18 actual and reasonable costs of the investigation and prosecution of the case".

19 EVENTS, ACTS OR OMISSIONS

20 14. On or about April 21, 2003, the Physical Therapy Board of California
21 received a complaint from John Nativio, Physical Therapy Advisor, Blue Shield of California,
22 alleging that documentation submitted by Washington Outpatient Rehabilitation Center to Blue
23 Shield of California, which included billing for physical therapy services provided by a Physical
24 Therapy Assistant ("PTA"), lacked the required co-signatures of a Supervising Physical
25 Therapist. The Division of Investigation ("DOI") thereafter conducted an investigation on behalf
26 of the Board.

27 15. As part of the investigation, DOI investigators interviewed Nelson Mant
28 Tumanda, PTA 6004, who indicated as follows:

1 A. Tumanda identified himself as the PTA signing as “James
2 Tumanda” in the records. Tumanda described his duties as assisting PTs with patient treatment
3 plans. Tumanda stated that he believed the standard of practice was to have a PT first see and
4 evaluate the patient. Tumanda said the patients assigned to him were and are, routinely seen first
5 and evaluated by a PT who develops their plan of care. If there was no significant therapy or
6 supervision required, the patient was transferred to Tumanda who carried out the PT’s plan of
7 care.

8 B. Tumanda stated that his patients are listed under his name in the
9 appointment schedule. Although his schedule varied, he carried a caseload of about twenty
10 patients a day and often worked a 10 hours day. Tumanda stated that the ideal schedule is two
11 patients every half-hour; however, his schedule was half that because he worked alone. Tumanda
12 said a PT was usually in the clinic during business hours; however, he admitted there were days
13 when no PT was present, for instance, when a PT called in sick.

14 16. Physical Therapy Board consultants and investigators subsequently
15 conducted a records audit at Washington Outpatient Rehabilitation Center. The chart for the
16 patient identified as Patients 10 was reviewed¹ .

17 17 A review of Patient 10’s record revealed that on 03/10/03, Amy Knight,
18 PT, signed a Lower Extremity Evaluation Form. On 03/13/03, 04/28/03, and 05/01/03, Knight
19 signed Flow Chart Treatment Notes. Flow Chart Treatment Notes dated 03/18/03, 03/20/03,
20 03/25/03, 03/27/03, 04/01/03, 04/03/03, 04/08/03, 04/10/03, 04/22/03, and 04/24/03 were signed
21 by Michael Kwong, PTA, with no co-signature(s) by a Supervising PT.

22 CAUSES FOR DISCIPLINARY ACTION

23 18. Respondent is subject to disciplinary action based upon the events, acts, or
24 omissions, set forth hereinabove, pursuant to Business and Professions Code sections: 2660 (h);
25 2660 (i); and/or 2660 (j); and/or 2660 (k); and/or for violating or attempting to violate, or
26

27
28 1. Names of patients were redacted from the physical therapy records and replaced with a
letter or number as an identifier.

1 assisting in or abetting the violating of, or aiding or abetting or conspiring to violate, section
2 2630 of the Code and/or section 1399 of Title 16 of the California Code of Regulations; and/or
3 for violating or attempting to violate, or assisting in or abetting the violating of, or aiding or
4 abetting or conspiring to violate, section 1398.44 of Title 16 of the California Code of
5 Regulations, including subdivision (a), and/or (c), and/or (f), and/or (g), in that:

6 A. As a physical therapist assistant, respondent was not at all times
7 under the supervision of a physical therapist; and/or otherwise functioned autonomously [section
8 1398.44 of Title 16 of the California Code of Regulations]; and/or

9 B. As the physical therapist assistant, respondent practiced without a
10 supervising physical therapist readily available in person or by telecommunication to the
11 respondent at all times while respondent was treating patients; and/or respondent practiced
12 without periodic on site supervision and observation by a supervising physical therapist of the
13 assigned patient care [section 1398.44 (a) of Title 16 of the California Code of Regulations];
14 and/or

15 C. As the physical therapist assistant, respondent practiced without
16 communication verbally, or in writing , from the supervising physical therapist, prior to initiation
17 of treatment by respondent; and/or respondent practiced without a supervising physical therapist
18 determining which elements of the treatment plan could be assigned to respondent commensurate
19 with his qualifications, including experience, education and training. [by section 1398.44 (c) of
20 Title 16 of the California Code of Regulations]; and/or

21 D. Respondent, as a physical therapist assistant, failed to, within
22 seven (7) days of the care being provided by respondent, obtain review, cosignature, and dating
23 of all documentation by the supervising physical therapist; and/or failed to participate in a weekly
24 case conference with the supervising physical therapist and have it documented in the patient
25 record [section 1398.44 (f) of Title 16 of the California Code of Regulations]; and/or

26 E. Respondent, as a physical therapist assistant, failed to obtain a
27 regularly scheduled and documented case conference between the supervising physical therapist
28 and physical therapist assistant regarding the patients treated [section 1398.44 (g) of Title 16 of

1 the California Code of Regulations]; and/or

2 F. Respondent, as a physical therapist assistant, was essentially
3 practicing independently and autonomously in the clinic with his own schedule and without the
4 required co-signatures or documented patient conferences with a supervising physical therapist
5 [section 2630 of the Code].

6 PRAYER

7 WHEREFORE, Complainant requests that a hearing be held on the matters herein
8 alleged, and that following the hearing, the Physical Therapy Board of California issue a
9 decision:

10 1. Revoking or suspending Physical Therapist Assistant License Number AT
11 6485, issued to MICHAEL KINWAI KWONG;

12 2. Ordering MICHAEL KINWAI KWONG to pay the Physical Therapy
13 Board of California the reasonable costs of the investigation and enforcement of this case,
14 pursuant to Business and Professions Code section 2661.5;

15 3. Taking such other and further action as deemed necessary and proper.

16 DATED: January 13, 2006

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19 Original Signed By:
20 STEVEN K. HARTZELL
21 Executive Officer
22 Physical Therapy Board of California
23 Department of Consumer Affairs
24 State of California
25 Complainant
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